

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

JEWELERS MUTUAL)	
INSURANCE COMPANY,)	
)	
PLAINTIFF)	
)	
v.)	Civil No. 96-22-P-H
)	
ETIENNE & CO., INC.,)	
)	
DEFENDANT)	

ORDER ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

This is a dispute over a jewelry insurance policy. The insured, Etienne & Co., Inc., purchased a “Comprehensive Jewelers Block Policy” from Jewelers Mutual Insurance Company to cover its line of jewelry stock. The comprehensive block policy contains an exclusion that states:

We do not cover property . . . [f]or theft from in or on a vehicle that is not attended unless endorsed to the policy. [There is no such endorsement in this case.] An attended vehicle has a person actually in or on the vehicle. This must be you, your employee, or a person whose sole duty it is to attend the vehicle.

Compl., Ex. A (Comprehensive Jewelers Block Policy) at 2.

On September 12, 1995, the vehicle of Etienne Perret, a principal and officer of the insured, was robbed in Carpitera, California. I use Perret’s November 7, 1995, statement under oath to describe the circumstances of the robbery, because it provides the version most favorable to the insured on these cross-motions for summary judgment.

I chose that gas station because it had signage that indicated it took payment cards and it had signage that said ATM, I think it said at the

pump, and so nowadays on the road it's becoming extremely difficult to find full service gas stations and so the best alternative to a full service gas station is the gas stations that have the pumps that accept credit card [sic] right at the pump. The signage led me to believe this station did. When I got there, I pulled up to pump 16. It was the only pump available at the time or, as I remember, and went to, go out of the car assuming that I could pump gas. On closer inspection the pumps did not have the credit card slot and looking around the area there were no other gas stations that I saw, so when I got out of the car to pump the gas, I had made sure that all the doors were locked and the line [of jewelry] was in the car on the floor by the passenger seat. At that point I made the decision to run into the building and give them my credit card so I could proceed to pump. When I got into the building, I noticed that there were several people in line. I didn't plan to wait in that line and showed the attendant my card to give him the card for payment, and at that point he said "we don't accept credit cards." I believed those were his words. I proceeded back to the car. I did not buy anything.

And [sic] got to within what I estimate 6 feet of the car on the opposite side of the pump from the car. I was parked on the street side of pump 16. When I got to the side that was closest to the building, not the street side, but the, [sic] I noticed two fellows at my passenger side window with a crowbar. At that point, one struck the window with the crowbar where it was a metal bar. I'm saying it was a crowbar for definition purposes, approximately 18 inches long, dark and in one blow took out the window. The window is of tempered glass that breaks into a million pieces, and grabbed in [sic] and took the line.

Mem. in Support of Def.'s Mot. for Partial Summ. J. at 3-4.

Simply put, it is apparent that Perret was neither "in" nor "on" the vehicle and thus under the policy definitions, the vehicle was not attended. There is no ambiguity in the policy. Indeed, common sense suggests that the words actually "actually in or on" are intended to have their literal meaning given the great risk of jewelry theft. Other cases are in accord. See JMP Assoc., Inc. v. St. Paul Fire & Marine Ins. Co., 674 A.2d 562, 564-65 (Md. Ct. Spec. App. 1996) (construing "in or on"); Royce Furs, Inc. v. Home Ins. Co., 291 N.Y.S.2d 529, 530-31 (1968) (construing "actually in

or upon”); see also Wideband Jewelry Corp. v. Sun Ins. Co. of N.Y., Inc., 619 N.Y.S.2d 339, 339-40 (1994) (construing “actually in or upon”).

Because there is no coverage under the clear wording of the policy, it is unnecessary for me to deal with the insurance company’s alternative argument concerning false swearing.

The plaintiff’s motion for summary judgment on the Complaint and on Count I of the Counterclaim is **GRANTED**. The defendant’s motion for partial summary judgment is **DENIED**.

Within ten (10) days, the parties shall notify the Court whether anything remains of Counts II, III and IV of the Counterclaim or whether final judgment on all matters should be entered.

SO ORDERED.

DATED THIS 3RD DAY OF JULY, 1996.

D. BROCK HORNBY
UNITED STATES DISTRICT JUDGE